ROLJ 0126



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October 21, 1992

Captain Donn P. Brooks
Los Angeles County Sheriff's Department
Homicide Bureau
211 West Temple Street
Los Angeles, California 90012

Dear Captain Smith:

Re: S.I.D. File No. 100-7287/92-0242
L.A.S.O. /File No. 092-07350-0381-055

This office has completed its investigation of the fatal shooting of [redacted] age 15, by Los Angeles County Sheriff's Department Deputies Wayne Beckley and Jeffrey Moore. The incident took place on April 30, 1992, at approximately 4:50 p.m. Because of the civil unrest that was ongoing for the previous twenty-four hours in the area, this office was not sending a rollout team to shooting scenes.[1]

We have received, reviewed, and considered the two hundred page report prepared by your Homicide Bureau Investigators Robert Carr and Ronnie Lancaster regarding this incident. The report contains the statements of deputies, civilians, observations of investigating officers, and the report prepared by Deputy Medical Examiner James Dibdin, M.D. We also personally interviewed civilian witnesses, visited the area and scene of the shooting, and interviewed Doctor Dibdin.

The purpose in our review and investigation in this case is to determine whether Deputies Moore or Beckley violated any criminal law. Based on our consideration of the report prepared by Investigators Carr and Lancaster, our civilian interviews, our visit to the scene, and our interview with Doctor Dibdin, we have concluded that a trier of fact would not find, beyond a reasonable doubt, that either Deputy Moore or Beckley violated any criminal statute. Therefore, we plan no further action in this matter.

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1 This office was formally notified on May 4, 1992, at 11:45 a.m.

STATEMENT OF FACTS

On April 30, 1992, at approximately 4:50 p.m., Deputies Wayne Beckley and Jeffrey Moore were assigned to Lennox Station patrol. At that time, the deputies were working together in "bike" uniform[2] in a black and white radio car. Deputy Moore was driving and Deputy Beckley was the passenger officer. As they were driving north on Hawthorne Boulevard approaching Century Boulevard, the deputies stated that they saw a lot of people looting the various businesses in the area. The deputies said that they heard gunfire coming from a group of four males that were on the west side of the street standing next to a black Ford Tempo in front of a Beef Bowl restaurant. One of the males, who was wearing a gray shirt, had a large pistol in his hand. That male pointed the gun at the deputies and fired approximately six times. Both deputies said that one bullet passed through the open side windows of the police car while another shot hit the undercarriage.

As Deputy Moore began to make a U-turn to apprehend the male with the gray shirt, the males entered the black Tempo and began driving south on Hawthorne Boulevard.[3] Deputy Moore said that he broadcasted over the radio that he and Deputy Beckley had been fired upon. Deputy Moore also said that he began to "chase" the Tempo.[4]

The Tempo collided with the rear end of a parked Oldsmobile in the area of Hawthorne Boulevard and 102nd Street. The deputies stated that they got out of their radio car and approached with their guns drawn. However, the deputies said, the Tempo veered toward Deputy Beckley who had to jump out of the way to avoid being hit. The deputies then reentered their police car and chased the Tempo.

The deputies said that as they followed the Tempo south on Hawthorne Boulevard, one of the passengers in the Tempo threw a handgun out of the car onto the street. Deputy Moore thought that it was the 10500 or 10600 block of Hawthorne Boulevard. Deputy Beckley said that he thought that it was the 10700 block. According to the deputies, there were hundreds of people on the

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2 The "bike" uniform consists of a white T-shirt with a sheriff's badge embroidered on the left breast, sheriff's emblems on both shoulders, and the word "SHERIFF" in large letters on the back. The pants are the green army "fatigue" type. The uniform also consists of the standard "Sam Brown" gun and equipment belt.

3 The males were subsequently identified as: [redacted] driver; [redacted] and [redacted] passengers.

4 It is unclear whether the deputies were "in pursuit" with emergency lights and siren activated.

street in the area where the gun was thrown. Although assisting deputies later looked for the weapon, it was not found.

As the Tempo neared the intersection with Lennox Avenue, it suddenly turned west into the driveway of the Lennox Car Wash located at 10709 Hawthorne Boulevard. The deputies were unable to make the turn. They overshot the car wash and turned west on Lennox Avenue. They went to the first street, Burin Avenue, and turned north to find the males. At this point, the deputies said that some pedestrians directed their attention to four males who were running westbound across Burin Avenue from the apartment complex at [redacted]

The males crossed Burin Avenue and ran up the rear driveway of 4437 Lennox Avenue. Both deputies stated that they heard a shot coming from the direction of the running males. Deputy Moore said that he was surprised that the suspects had another gun and was in fear for his life. The males ran to the rear of the driveway and began climbing over an eight-foot chain-link fence topped with two feet of barbed wire. According to the deputies, the first male over the fence, [redacted] was the person wearing the gray shirt who had first shot at them on Hawthorne Boulevard.

The deputies stopped the radio car approximately 20-30 feet from the point where the first male jumped the fence. They got out of the car and drew their nine-millimeter Beretta service weapons. Deputy Beckley stated that the next male climbing the fence, [redacted] had a gun in his hand. The deputies yelled, "Freeze!" at which time the male looked over his shoulder in the deputies' direction. Believing that they were both going to be fired at, both deputies fired at him but missed.

The next male to climb the fence was [redacted] According to Deputies Moore and Beckley, [redacted] reached toward his waistband and turned in their direction. Deputy Moore said that [redacted] shirt was loose fitting and he thought that [redacted] was reaching for a gun. When asked by Investigators Carr and Lancaster what Deputy Beckley's state of mind was at the time, he stated:

> Very, very scared. 'Cause we had already taken rounds and one time hearing the rounds go through, uh, the car door was very frightening. When I saw the suspect on the fence with the gun, I was, uh, fearing that

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5 The apartment complex is located [redacted] the Lennox Car Wash.

6 It was later appears that [redacted] had not been in the Tempo. He may have arrived at the apartment complex in the blue Camaro at [redacted] just before the other males ran through. [redacted] knew them and joined them in running.

> he was indeed going to turn around and shoot me, I was fearing for my life at that time. And when the second suspect [redacted] had his hand hidden from my view and was turning towards me, I was also afraid he also was gonna attempt to shoot us.

Both deputies, therefore, fired at [redacted] as he was in the process of climbing the fence. Deputy Moore said that he fired three times. Deputy Beckley stated that he shot four times. The deputies estimated that they were approximately 15 to 25 feet from [redacted] when they fired.

[redacted] was struck with one bullet on the right side of his back. He fell to the ground without making it over the fence. It was discovered that [redacted] did not have a weapon. He was taken by paramedics to Robert F. Kennedy Medical Center where he was pronounced dead by Doctor Richard Biscay, M.D., at 5:00 p.m.

The fourth male, [redacted] did not try to climb the fence. He was taken into custody next to a wood shed in the driveway.

Assisting deputies responded to the driveway area of 4437 Lennox Avenue where [redacted] was shot. Ten nine-millimeter expended shell casings were recovered from the ground by Deputy Mark Bailey. They were in two groups. One group contained four shells. This group was located forward of, and on the driver's side of, Deputies Moore and Beckley's parked radio car. This was the location where Deputy Moore had fired from. The other group contained six shells. That group was on the passenger side of the radio car adjacent to the first group. Deputy Beckley fired from that position. Both deputies fired from a position that was to the rear, and to the right, of [redacted] location on the fence.

Deputy Bailey located the black Ford Tempo, license number [redacted] in the parking lot of the Lennox Car Wash. There was damage on the right, front portion of the car.

Investigators Carr and Lancaster arrived at the intersection of Hawthorne Boulevard and Century Avenue after 6:00 p.m. They observed a mini-mall, containing a Beef Bowl restaurant, on the southwest corner. Most of the windows and doors in the mini-mall were broken out. The investigators noticed that the stores comprising the mini-mall across the street at the southeast corner of the intersection, were on fire. They also saw in this mall, two bullet holes in the west-facing window of the "Rentronics" store. This window is directly east, across Hawthorne Boulevard, from the Beef Bowl restaurant.

The investigators then found the Oldsmobile that the Tempo had collided with. That location was on the west side of the street in front of 10115 Hawthorne Boulevard. The investigators saw that the Oldsmobile had damage on its left, rear portion. There was broken glass in the street and the right front tire was on the sidewalk.

Deputy Medical Examiner James Dibdin, M.D., performed an autopsy on [redacted] Doctor Dibdin established that [redacted] had sustained one gunshot wound. The bullet entered [redacted] upper back on the right side. The bullet traveled back-to-front, right-to-left, and upward. Doctor Dibdin recovered a fragment of the bullet from [redacted] right lung. This fragment was insufficient for analysis to determine from whose gun it was fired.

Investigators Carr and Lancaster interviewed [redacted] age 17. She lived at [redacted] at the time of the shooting. Her residence was on the property that [redacted] and [redacted] landed on after climbing over the chain-link fence. Ms. [redacted] stated that she was in her kitchen when she looked out of the window and saw two males jump over the fence onto her property. She said that one of the males had a pistol in his hand. The two males began pounding on her door and were yelling to be allowed in. Ms. [redacted] said that she was frightened and did not open the door. She then heard three to four shots being fired in sequence.

INVESTIGATION BY THE DISTRICT ATTORNEY'S OFFICE

On September 14, 1992, Senior District Attorney Investigators [redacted] and [redacted] re-interviewed [redacted] at her residence. She gave substantially the same account as she gave to the Sheriff's investigators. She reiterated that one of the males that jumped over her fence had a gun. She further stated that when the males were banging on her door demanding entry, she ran to her bedroom due to fear. She then said that she saw that the males ran to her front yard, through the front gate, and out of view.

Investigators [redacted] and [redacted] interviewed [redacted] on September 14, 1992. Mr. [redacted] is the [redacted] of [redacted] and lives at her residence. He said that he was outside the residence when he heard two shots from the rear of the house. Mr. [redacted] said that he saw two juveniles running from the southwest portion of the back yard. One was tall and thin while the other was stocky. The stocky one was was shirtless and was clutching his side or stomach. After they ran away, Mr. [redacted] saw a torn white T-shirt on top of the barbed wire fence in the back yard.

Investigators [redacted] and [redacted] interviewed [redacted] a passenger in the Tempo, on September 17, 1992. [redacted] said that [redacted] was driving, and

that [redacted] and [redacted] were also in the car. They were driving north on Hawthorne Boulevard in the area of 104th Street when their attention was drawn to a blue Camaro that contained [redacted] three girls, and a male known only as [redacted] The people in the Camaro beckoned the Tempo to follow them.

[redacted] drove behind the Camaro north on Hawthorne Boulevard to Century Boulevard where both cars made U-turns and stopped adjacent to a Beef Bowl restaurant. [redacted] said that there was a lot of looting going on in the area. [redacted] and [redacted] walked over to the Camaro and spoke to [redacted] and [redacted] and [redacted] remained in the Tempo.[7] [redacted] stated that his attention was then focused on an approaching Sheriff's car that had its red lights illuminated. [redacted] ran to the Tempo and got in. [redacted] remained next to the Camaro.

[redacted] stated that the police car pulled behind the Tempo. The passenger officer pointed a shotgun at them. Everyone in the Tempo ducked down. [redacted] began driving south but collided with a parked car. [redacted] continued south with the Sheriff's car chasing them. [redacted] drove into the Lennox Car Wash. They all got out of the Tempo and ran west through an apartment complex, across a street, to a fence. [redacted] who was wearing a gray shirt, climbed over the fence first. [redacted] came over next. [redacted] stated that he then heard a car come to a screeching stop followed by five gunshots. He did not look back and but heard [redacted] yelling, "Wait for me." [redacted] and [redacted] then ran to [redacted] house. [redacted] stated that he was not aware that [redacted] had been running with the group and did not learn until later that [redacted] had been killed. [redacted] stated that neither he nor anyone in the Tempo had a gun.

Investigators [redacted] and [redacted] interviewed [redacted] and [redacted] They individually gave similar accounts as the one provided by [redacted] and [redacted] added that as they were running west from the Lennox Car Wash, they saw that [redacted] was running with them. [redacted] stated that [redacted] had gotten out of a blue Camaro that was at the apartment complex that he [redacted] and [redacted] were running through. [redacted] added that he tore his shirt on the barbed wire as he was climbing over the fence.

Neither [redacted] nor [redacted] provided any reason why [redacted] began running with them. All three, along with [redacted]

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7 In interviews with [redacted] and [redacted] they gave differing information as to who got out of the Tempo. It appears, however, that at least three of the males in that car got out to speak with the people in the Camaro.

told the investigators that no one in the Tempo fired any shots at the deputies, nor did any of them have a firearm. They also denied that they had looted any of the businesses at Hawthorne and Century Boulevards.

On October 7, 1992, Investigator [redacted] and the undersigned went to the vicinity of the incident. We noticed that the distance between the Beef Bowl restaurant and 10115 Hawthorne Boulevard (location where [redacted] collided with the Oldsmobile) was 40 yards. The Lennox Car Wash was four tenths of a mile south of the Beef Bowl restaurant. We also noticed a bullet hole in the eave of [redacted] residence above where [redacted] and [redacted] had climbed the fence.

On October 7, 1992, Investigator [redacted] and the undersigned interviewed James Dibdin, M.D., at the Office of the Los Angeles County Medical Examiner. I presented the scenario provided by Deputies Moore and Beckley as to the circumstances of the shooting of [redacted] Doctor Dibdin stated that their account was consistent with the location of the entry wound and the trajectory of bullet track in [redacted] body.

LEGAL ANALYSIS

California law allows the use of deadly force in one's self-defense, or in the defense of another, if it reasonably appears to the person claiming the right of self-defense that he actually and reasonably believed that he was in imminent danger of great bodily injury or death. People v. Williams (1977) 75 Cal. App. 3d 731.

It is lawful for a person who is being assaulted to defend himself from attack if, as a reasonable person, he has grounds for believing, and does believe, that bodily injury is about to be inflicted upon him. In doing so, such person may use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. California jury Instructions--Criminal (CALJIC) 5.30.

The requirement of actual danger is not necessary to justify the use of deadly force in self-defense. If one is confronted by the mere appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. Put another way, the right of self-defense is the same whether the danger is real or merely apparent. People v. Toledo (1948) 85 Cal. App. 2d 577; People v. Jackson (1965) 233 Cal. App. 2d 639.

A killing, allegedly in self-defense, constitutes criminal manslaughter where the action which leads to the victim's death is committed under an honest, but unreasonable belief, in the necessity to defend oneself against imminent peril to life or great bodily injury. People v. Flannel (1979) 25 Cal. 3d 668. However, in a criminal trial on a charge of murder or manslaughter, the burden is on the prosecution to prove beyond a reasonable doubt that the homicide was unlawful, that is, not committed in self-defense. If there is a reasonable doubt that the homicide was unlawful, that is, whether it was committed in self-defense, the defendant must be found not guilty. CALJIC 5.15.

The question presented in this case is whether Deputies Moore and Beckley reasonably believed that they were in imminent danger of great bodily injury or death from [redacted] at the time that the shots were fired. There are some puzzling aspects to the case: Why would [redacted] join in the group being chased by the deputies? Why would [redacted] who was trying to get away from deputies that had just fired their weapons at [redacted] reach for his waistband as he was trying to climb the fence?[8] If [redacted] and [redacted] did not shoot at the deputies, were not armed, and were not looting as they claimed, why, with all of the criminal activity occurring at Hawthorne and Century Boulevards, would the deputies direct their attentions toward them?

In making the determination whether Deputies Beckley and Moore were reasonable in their fear that [redacted] presented to them an imminent threat of great bodily injury or death, it is important to examine what had happened to them in the minutes preceding the shooting. The community was in turmoil with widespread looting and lawlessness. The deputies had been shot at by one of the males next to the black Tempo at Hawthorne and Century Boulevards. One of those bullets passed through the open windows of the police car as the deputies were seated inside. Another bullet struck the undercarriage of the car. As the deputies were chasing the Tempo, they saw a gun thrown from it. As the group of males was running toward the fence, the deputies heard gunfire. They did not know who was firing but believed that the shots were coming from the group of running males. However, Deputy Moore stated that they were coming from the group of males as they ran up the driveway toward the fence. Both deputies thought that the second person over the fence was armed. Deputy Beckley saw a gun in his hand.[9] When [redacted] climbed the fence, the deputies could not see his right hand when he turned in their direction. They both stated that they believed that [redacted] was attempting to arm himself.

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8 An explanation could be that [redacted] loose-fitting shirt got caught on the barbed wire as he was going over the fence.

9 This was corroborated by [redacted] who stated that one of the males who climbed over the fence had a gun.

With all that the deputies had encountered, we do not feel that their fears were unreasonable.

In this case, a successful prosecution would rest primarily upon the crediblity of [redacted] and [redacted] That crediblilty is questionable in light of the problematic issues mentioned in the previous two paragraphs. Further detracting from that credibility, is the statement of [redacted] (having no apparent bias or prejudice) that one of the males who jumped over the fence had a gun.

In conclusion, we cannot say that Deputies Moore and Beckley were unreasonable in their fear that [redacted] presented an imminent threat of deadly danger to them. The deputies were not legally required to wait to see if, in fact, [redacted] was going to shoot them before responding with deadly force. "Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." People v. Collin (1961) 189 Cal. App. 2d 575.

Under the cases cited above, coupled with the facts of this case, it can not be said that the shooting of [redacted] was not legally justified based on criminal law principles. Therefore, we plan no further action in this matter and we are closing our file.

Very truly yours,

IRA REINER
District Attorney

R. DAN MURPHY
Assistant District Attorney

By
Mark Arnold
MARK ARNOLD
Deputy District Attorney

c: Deputy Wayne Beckley
Deputy Jeffrey Moore